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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,788	01/09/2002	Edith H. Stern	YOR920010588US1	5167
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BMT/IBM 50 LOCUST AVENUE NEW CANAAN, CT 06840			EXAMINER WINTER, JOHN M	
			ART UNIT 3621	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/042,788	Applicant(s) STERN ET AL.	
	Examiner JOHN M. WINTER	Art Unit 3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 and 56-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-47, 56-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgements

The Applicants amendment filed on March 5, 2008 is hereby acknowledged, Claims 1-47, 56-58 are pending

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-47, 56-58 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 states "wherein said benefit is based on a reliability of the first distributor; shifting the content to the first distributor from a third distributor based on a reliability level of the third distributor " The Examiner submits that the reliability of a person is subjectively measured -- not quantitative and therefore indefinite.

Claim 1 states "monitoring at the first distributor a customer satisfaction of the second distributor"" The Examiner submits that the customer satisfaction person is subjectively measured, and therefore indefinite.

Claims 29 and 56-58 contain similar limitations and are rejected for at least the same reasons.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-47, 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stefik in view of Kenner et al. (US Patent 5,956,716) and further in view of LeVine (US Patent 6,961,714)

As per claim 1,

Stefik ('403) discloses a method for establishing a distribution network, comprising:
establishing a first distributor of content ; (Abstract, Figure 2 [feature of the master repository])

providing a first non-monetary benefit to said first distributor as a result of said first distributor establishing a second distributor of said content.(Figure 15, usage of content is granted)

Stefik does not explicitly disclose "via transmission of an electronic signal" Kenner et al ('716) discloses "via transmission of an electronic signal" (Column 12, lines 14-32), It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the Stefik ('403) method with the Kenner ('716) method in order to transmit digital content via electronic mediums such as the Internet in order to maximize exposure; furthermore

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the combination of these elements does not alter their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention..

Stefik does not explicitly disclose "receiving approval from a provider of content to allow a first distributor to act as a distributor of said content; wherein said providing comprises providing an indication of a location of the benefit wherein said providing comprises providing instructions describing how to receive the benefit, Levine ('714)discloses "receiving approval from a provider of content to allow a first distributor to act as a distributor of said content; wherein said providing comprises providing an indication of a location of the benefit wherein said providing comprises providing instructions describing how to receive the benefit, " (Column 5, lines 28-53 – discussion of tracking system and credit information), It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the Stefik ('403) method with the Levine ('714) method in order to profile usage of digital content; furthermore the combination of these elements does not alter their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention..

Claims 29 and 56-58 are in parallel with claim 1 and are rejected for at least the same reasons.

Claims 6-9 are in parallel with claim 1 and are rejected for at least the same reason, Examiner notes that these claims merely duplicate a previously claimed process without any novel feature of patentability.

As per claim 2,
Stefik ('403) discloses the method of claim 1,
wherein said establishing a first distributor of content capable of distributing said content via transmission of an electronic signal includes at least one of the following: providing data to said first distributor indicative of said benefit (Figure 15).

As per claim 3,
Stefik ('403) discloses the method of claim 1,
further comprising: providing said content to said first distributor (Figure 19).

As per claim 4,
Stefik ('403) discloses the method of claim 1,
wherein said providing said content to said first distributor includes providing data to said first distributor indicative of a location where said content is located (Figure 2).

As per claim 5,
Stefik ('403) discloses the method of claim 1,
wherein said providing a first benefit to said first distributor includes at least one of the following: providing an indication to said first distributor of said first benefit; applying the first benefit during a transaction involving said first distributor; providing an instruction to a party to provide said first benefit to said first distributor; and providing instructions to said first

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distributor regarding how said first distributor can receive said first benefit (Figure 15, usage rules describe a fee {i.e. benefit} is received for usage of content, rules provide payment and usage details).

As per claim 10,

Stefik ('403) discloses the method of claim 1,

wherein said second distributor is capable of distributing said content via transmission of an electronic signal (Figure 2).

As per claim 11,

Stefik ('403) discloses the method of claim 1,

wherein said content is in electronic format (Abstract).

As per claim 12,

Stefik ('403) discloses the method of claim 1,

wherein said content includes at least one of the following: educational information; an advertisement; a survey; a question; an animation; a sound file; a music file; a real-time feed of information; streaming video; streaming audio; a movie file; software; a video clip; a multimedia file; an image; text material; and rich media (column 1, lines 29-45).

As per claim 13,

Stefik ('403) discloses the method of claim 1,

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wherein said first benefit is based, at least in part, on at least one of the following: an amount per distribution of said content by said first distributor to another distributor; (Figure 15).

As per claim 14,

Stefik ('403) discloses the method of claim 1,

wherein said first benefit is based, at least in part, on at least one of the following: an amount of content distributed by said first distributor; (Figure 15).

As per claim 15,

Stefik ('403) discloses the method of claim 1,

further comprising: allowing said first distributor to provide said content to said second distributor(Figure 2).

As per claim 16,

Stefik ('403) discloses the method of claim 1,

further comprising: receiving said content(Figure 19).

As per claim 17,

Stefik ('403) discloses the method of claim 1,

wherein said first distributor is part of a network of at least one distributor for said content (Figure 2).

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As per claim 18,

Stefik ('403) discloses the method of claim 1,

wherein said first benefit includes at least one of the following: a monetary amount (Figure 15).

As per claim 19,

Stefik ('403) discloses the method of claim 1,

further comprising: providing to said first distributor an indication of a desired attribute for a new distributor of said content(Column 13, lines 40-47 [attribute is integrity]).

As per claim 20,

Stefik ('403) discloses the method of claim 1,

further comprising: determining at least one desired attribute for a new distributor of said content (Column 13, lines 40-47 [attribute is integrity]).

As per claim 21,

Stefik ('403) discloses the method of claim 1,

further comprising: determining at least one attribute of said content(Figure 15).

As per claim 22,

Stefik ('403) discloses the method of claim 1,

further comprising: notifying said first distributor of an availability of said first benefit

prior to said establishing a first distributor of content (Figure 15).

As per claim 23,
Stefik ('403) discloses the method of claim 1,
further comprising: notifying said first distributor of an availability of said first benefit
prior to said providing a benefit to said first distributor as a result of said first distributor
establishing a second distributor of said content (Figure 15).

As per claim 24,
Stefik ('403) discloses the method of claim 1,
further comprising: providing said content to said second distributor (Figure 1).

As per claim 25,
Stefik ('403) discloses the method of claim 1,
further comprising: receiving a notification from said first distributor that said first
distributor has established said second distributor.

As per claim 26,
Stefik ('403) discloses the method of claim 1,
further comprising: monitoring performance of said first distributor (column 13, lines
20-50).

Claim 27 is in parallel with claim 26 and is rejected for at least the same reasons.

As per claim 28,
Stefik ('403) discloses the method of claim 1,
further comprising at least one of the following: receiving a payment for said content
from a recipient of said content; receiving a payment for said content from said first
distributor; and receiving a payment for said content from said second distributor
(column 23, lines 51-65).

Claims 30- 47 are in parallel with claims 1-28, and are rejected for at least the
same reasons.

Response to Arguments

Applicant's arguments with respect to the pending claims have been considered but are
moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in
this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).
Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE
MONTHS from the mailing date of this action. In the event a first reply is filed within TWO
MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John M. Winter whose telephone number is (571) 272-6713. The examiner can normally be reached on M-F 8:30-6, 1st Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer can be reached on (571) 272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John Winter
Patent Examiner -- 3621

/ANDREW J. FISCHER/
Supervisory Patent Examiner, Art Unit 3621